

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.407 OF 1998

CHHIPA WELFARE ORGANIZATION

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

MR AH QURESHI for the Petitioner

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order: /02/1998

C.A.V. ORDER

Heard the learned counsel for the petitioner.

2. This petition has been filed by the petitioner, a registered Public Trust engaged in educational activities, more particularly among the minority community, challenging therein the order dated 16th September 1997 of the District Education Officer, Ahmedabad, under which the petitioner was directed to absorb the respondent No.3 herein, as senior clerk in the school run by petitioner-Trust.

3. The learned counsel for the petitioner admits that the Shri H.R.Singh was a senior clerk in Dwarkesh Hindi High School, Ahmedabad, from which he was rendered surplus. The petitioner's institution is also a minority institution. The learned counsel for the petitioner, by placing reliance on the decision of the Hon'ble Supreme Court as well as of the Kerala High Court and referring to the provisions of Article 30 of the Constitution and Section 17(26) and 40A of the Gujarat Secondary Education Act, 1972, contended that the provisions of the Act aforesaid are not applicable to the minority institution and as such, a surplus teacher could not have been sent for absorption in the minority institution, by respondent No.2. However, the learned counsel for the petitioner, on being asked by the Court, is unable to satisfy the Court how any prejudice has been caused to the institution on absorption of respondent No.3 on the post of senior clerk. The only submission made in this

respect by learned counsel for the petitioner is that the respondent No.3 is not a person of choice of the petitioner. However, the learned counsel for the petitioner admits that appointments on the post of senior clerks are not restricted only for a particular community in the institution run by petitioner. Otherwise also, it is a case of two minority institutions. The respondent No.3 was working in the minority institution wherefrom he was declared surplus and as such, I do not find any illegality in the action of the respondent No.2 to order for his absorption in another minority institution. Taking into consideration the totality of the facts of this case, this writ petition is wholly misconceived and the same is dismissed.

(S.K.Keshote, J)

(sunil)